Office-Supreme Court, U.S.
FILED
JUN 21 1966
JOHN F. DAVIS, CLERK

CASE NO. 276

In the Supreme Court of the United States

OCTOBER TERM, 1965

REED R. MAXFIELD and
JOHN R. CHRISTOPHER,
Petitioners,

vs.

UNITED STATES OF
AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals
for the Tenth Circuit

RONALD C. BARKER
2870 South State Street
Salt Lake City, Utah
Attorney for Petitioner John R. Christopher

ROBERT W. HUGHES
CLIFFORD L. ASHTON
707 Boston Building
Salt Lake City, Utah
Attorneys for Petitioner Reed R. Maxfield

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Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit, entered in the above entitled case on the 22nd day of April, 1966.

CITATIONS TO OPINIONS BELOW

The opinion of the United States Court of Appeals for the Tenth Circuit is reported in ..... F.2d ..... A copy of the opinion is attached hereto as Appendix A. No opinion was issued by the District Court.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1). The judgment of the United States Court of Appeals for the Tenth Circuit was entered April 22, 1966. On the 24th day of May, 1966, an Order was issued by the above Court extending to June 21, 1966, the time for filing a petition of certiorari. Jurisdiction to review the judgment in question by writ or certiorari is invoked under Rule 37, Federal Rules of Criminal Procedure and applicable rules of this Court.

QUESTIONS PRESENTED

The Court of Appeals affirmed a judgment entered on a jury verdict convicting Petitioners because it found no error in the proceeding of the Trial Court. Petitioners were tried under an indictment returned in the District of Utah. Petitioners were charged in the first eight counts of the indictment with violations of the anti-fraud provisions of the Securities Act of 1933, 15 U.S.C. 77(q); in Counts Nine and Ten violations of the Mail Fraud Statute, 18 U.S.C. 1341; and in

Count Eleven with a conspiracy to violate the anti-fraud provisions of the Securities Act and the Mail Fraud Statute in violation of the Conspiracy Act, 18 U.S.C. 371. On February 4, 1965, the jury found Petitioners guilty of the first eight counts of the indictment, and not guilty on Counts Nine, Ten and Eleven of violating the mail fraud and conspiracy statutes. The undisputed facts show:

a) That Petitioner Reed R. Maxfield (hereafter "Maxfield") was President of Uinta Finance Company and chairman of its board (hereafter "Uinta Finance"), which decided in 1958 to form an insurance company, Uinta National Life Insurance Company (hereafter "Uinta National");

b) The officers and directors of Uinta Finance subscribed to 10,000 shares or 400,000 units of Uinta National stock for $147,770 for which they paid $10,000 down. About five months later Maxfield and his brother borrowed $125,000 from Uinta Finance and with these proceeds paid for most of the foregoing shares of Uinta National stock in order to qualify Uinta National as a Legal Reserve Insurance Company. Uinta National also received its solicitation permit from the Utah Insurance Commissioner to commence selling insurance;

c) The Maxfields, about six months after they borrowed the foregoing amount, repaid it by delivering to Uinta Finance 242,000 units of Uinta National stock. This transaction was an arms-length transaction executed pursuant to a resolution of the Board of Directors of Uinta Finance (R. 291, 416). Maxfield left the Board of Directors' meeting while the directors voted

to purchase the stock and cancel the above described note;

d) Uinta Finance, pursuant to a resolution of its Board of Directors offered to sell and contracted for the sale of some of the securities it had acquired from Maxfield and his brother. Uinta Finance negotiated with various prospective stock purchasers for the sale of a block of its stock (R. 1009-18). Negotiations culminated with a contract with Western States Underwriters, Inc. (hereafter "Western States") wherein it agreed to sell 135,365 units of its stock to Western States for $1.14 per unit. The shares were to be delivered to Western States upon payment of the agreed unit price.

e) Uinta National stock was trading in limited quantities at $1.27 per unit when Western States purchased its stock from Uinta Finance.

f) John R. Christopher (hereafter "Christopher") had known Maxfield as early as 1956 when Maxfield formed and sold stock in Uinta Finance. From 1956 to and including the time when the charges were allegedly committed, Christopher acted as a stock salesman or stock sales manager for companies of which Maxfield was President;

g) In March of 1959 Christopher incorporated Western States (Ex. 3). Western States was duly licensed with the Utah Securities Department as a broker-dealer;

h) Uinta Finance earned a profit of approximately $27,000 on the sale of its Uinta National stock acquired from Maxfield.

i) Western States sold the Uinta National stock to the public on installment contracts.

j) On September 27, 1960, during the investigation by the Securities and Exchange Commission (hereafter "SEC"), Christopher's deposition was taken. The interrogations related to the fund shortages of Western States and the reason it had not delivered the stock it had sold to its customers. Christopher in his deposition was induced to testify by the SEC's promise of reward or other benefits. He was told by the SEC investigator that they were not after him and that he was "a small fish" and, in fact, that the Commission was after Maxfield (R. 1166, 1173); Maxfield was not present at the time the deposition was taken, did not know it was being taken, did not know the time or place of taking, and had no opportunity to cross-examine the witness.

k) Christopher answered questions in his deposition with the view of fixing the blame of his predicament of misapplication of approximately $83,000 on Maxfield. However, Christopher, one month and eight days after his deposition was given, refuted his statement that Maxfield had any part of the Western States operation (R. 1180 and 1181).

The questions are:

a) Did the Trial Court violate guarantees of due process or commit other error in permitting the Government to read the deposition-confession of Christopher into the record over Petitioners' objection?

b) Should the conviction of Maxfield be permitted to stand when he was convicted on hearsay evidence?

c) Is the verdict contrary to the evidence and the law and is it inconsistent with itself?

d) Should Christopher's deposition, which was tantamount to a confession, have been admitted in evidence without first striking or deleting all references to Maxfield?

e) Did the Trial Court err in instructing the jury that a misrepresentation of law could be considered by them in determining the guilt or innocence of Petitioners and in permitting the admission of evidence concerning alleged misrepresentations concerning the law?

f) Did the Trial Court err in permitting the Government to question Maxfield on cross-examination relative to his conclusion concerning why his brother had purchased a security business, Mid-America, when Maxfield had no competent knowledge concerning the matter?

g) Did the Trial Court err in permitting the Government to cross-examine Maxfield relative to mergers occurring in 1961 and 1962, dates subsequent to the alleged crime with reference and emphasis on the large amount of money he and others received therefrom?

STATUTES INVOLVED

The Statutory provisions involved are 15 U.S.C. 77(q); 18 U.S.C. 1341 and 18 U.S.C. 371. These Statutes are set out in an Appendix B.

STATEMENT

This was a criminal action brought by Respondent against Petitioners who allegedly violated the above cited Statutes. Petitioners were charged under an indictment which contained eleven counts. The first eight counts charged violations of Section 77(q), Title 15, United States Code, and Section 17(a) of the Securities Act of 1933 which provide:

> "It shall be unlawful for any person in the offer or sale of any securities or the use of any means or instruments of transportation or communication in interstate commerce, or by the use of the mails, directly or indirectly:
>
> 1) to employ and devise, scheme, or artifice to defraud or,
>
> 2) to obtain money . . . by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements, made, in light of the circumstances under which they were made, not misleading, or
>
> 3) to engage in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon the purchasers."

Count One lists in subheadings (1) through (16) a series of alleged misrepresentations and in a second series of nineteen subheadings lists fraudulent concealment of alleged material facts.

The remaining seven of the first eight counts simply reiterate the same charge contained in Count One and charge a separate offense in each count by alleging that the identical fraudulent misrepresenation of fraudulent

failure to disclose was made or concealed to or from the different individuals named. Thus Counts One through Eight are identical, with the exception of naming the individual allegedly defrauded.

Counts Nine and Ten charge violations of Section 1341, Title 18, U.S.C.A. which makes it a criminal offense to devise a scheme or artifice to defraud by selling any security my mail. The only difference in the charge contained in the two counts thus charged was in the names of the individuals allegedly defrauded.

The final Count, Eleven, charged the Petitioners as follows:

> "During the times previously alleged in Count One (Count One through Eight are the same in this respect) of the indictment, the (Petitioners) . . . did conspire, combine, confederate and agree with each other, and with other co-conspirators not named as defendants herein, to commit the following crimes. . . ."
>
> 1. Violations of Section 77 (q) (a) of Title 15, U.S.C.A., in the offer for sale and sale of common stock of Uinta National Insurance Company directly or indirectly . . . by means of untrue statements and omissions to state material facts . . . operate a fraud and deceit on purchasers of said stock by use of the United States mails as described in Count One through Eight, inclusive, of this indictment, and hereby included herein by reference."

This, then, is a "stock fraud" case. The Court of Appeals concluded (in 15 printed pages, Appendix A to this Petition) that the evidence was sufficient to support the verdict of the jury and affirmed the judgment.

The evidence relied upon by Petitioners to sustain a reversal is shown by the following:

a) Maxfield formed Uinta Finance on September 4, 1956 (Ex. 1). This company was publicly owned. In 1958, Maxfield, with other officers of Uinta Finance, incorporated Uinta National as a Legal Reserve Insurance Company under Utah law. It then received its solicitation permit to engage in the insurance business in Utah. About six months after the $125,000 was borrowed, Maxfield repaid this debt to Uinta Finance by delivering to it 242,000 units of Uinta Natonal stock at the public offering price of $1.00 per unit.

The sale by Maxfield of his Uinta National stock to Uinta Finance was an arms-length transaction. The transaction vested title to said 242,000 units in Uinta Finance (R. 291; Ex. M.B.).

The stockholders of Uinta Finance ratified the purchase of the Maxfield stock on February 13, 1959, at a special stockholders' meetng (Ex. M.E.). Subsequently, the officers of Uinta Finance, elected to sell a portion of its Uinta National stock holdings at a profit, to wit: $1.14 per unit to Western States. Accordingly, Uinta Finance entered into a agreement with Western States similar to a conditional sales contract, in implementation of which Uinta caused its stock to be placed in a bank safety deposit box. Western States was entitled to receive only the shares for which it had actually paid.

Western States undertook to sell this stock it had purchased from Uinta Finance and, in fact, did receive $182,000 cash. It did deliver $96,140 in fully paid stock

to its subscribers, but failed to deliver to its subscribers approximately $83,000 worth of stock for which it had received payment. Uinta Finance realized a profit of approximately $27,000 on its stock sold and paid for by Western States.

The record is amply clear that Maxfield was not a controlling person of Western States. Furthermore, it shows clearly that he did not sell stock for Western States, neither did he employ any salesmen, supply any information to the public, or receive any money from the sale of the subject stock. Neither did he have anything to do with the sales activities of Western States. When Maxfield finally learned of the financial situation of Western States he took affirmative steps to protect the Uinta companies by advising the Utah Securities Commission of the information he learned and requested that regulatory body take whatever action it deemed necessary under the circumstances.

b) Petitioner Christopher participated as a stock salesman in the Uinta Finance stock sale and continued his stock selling efforts in a directive capacity in the Uinta National stock sales programs.

Western States was incorporated by Christopher, his brother-in-law and wife. This company was an independent brokerage corporation caused to be licensed by Christopher who not only sold the Uinta National stock it had purchased from Uinta Finance, but also sold Uinta National stock purchased from others which it resold, and undertook to sell the securities of the following other corporations:

1. Continental Life Insurance Company
2. Ogden Smelting and Refining Company
3. FIF Mutual Funds
4. A Fire Alarm Program
5. Idaho Farm Cooperative (R. 967, 977)

In September, 1960, the SEC was investigating Western States relative to its non-delivery of stock paid for by its customers. In this connection it took the deposition of Christopher (Ex. 122).

This deposition was tantamount to a confession by Christopher and was tainted two-fold:

Firstly, Christopher was induced by promises of or benefits by so testifying in that he was told the SEC was not after him, "a small fish," but, in fact, was after Maxfield (R. 1166, 1173).

Secondly, the Christopher confession was purposely aimed at Maxfield and was highly prejudicial to him. It was clearly an attempt by Christopher to lay the blame of the cash shortage of Western States of approximately $83,000 on Maxfield. Christopher was trying to make Maxfield the scapegoat to save himself.

NO DEFINITION OF CONTROLLING PERSON GIVEN JURY

The first eight counts of the indictment charged Maxfield with being a controlling person in several corporations and particularly Western States. The record completely fails to show that Maxfield in any way was controlling person in Western States. The

jury should have received by way of proper instruction a definition of what is a controlling person in order to consider that point in determining whether or not Maxfield was guilty as charged in the first eight counts.

In this regard, the following instruction which Defendant Maxfield requested that the Court give to the jury but which proposed instruction was refused by the Court (R. 1807) or its equivalent should have been delivered to the jury:

> "You are instructed that while some evidence has been introduced and received pertaining to the alleged false representations and promises and pertaining to fraudulent concealment of material facts by agents of Western States Underwriters, Inc., you are not to consider this evidence against the defendant, Reed Maxfield, unless you are first satisfied beyond a reasonable doubt that said defendant, Reed Maxfield, possessed the power to direct or to cause the direction of the management policies of Western States Underwriters, Inc."

The first eight counts of the indictment charged Maxfield with crimes of which he could only be guilty if he was a "controlling person" of Western States Underwriters. The jury's finding of guilty on these counts is a finding that he was a controlling person. The finding does not square with the jury's finding that Maxfield was not guilty under Count Eleven. Obviously, since the record is totally devoid of any competent evidence that Maxfield was a controlling person of Western States his conviction under the first eight counts arises out of the confusion in the minds of the jurors of what a controlling person is.

Had the jury been given the instruction, they could have based their deliberation on a legally sound premise. In its absence, they were simply awash in a sea of confusion.

THE CONFESSION OF CHRISTOPHER WAS NOT ADMISSIBLE

The use of the Christopher deposition to convict involves fifth and sixth amendment questions.

The use of the deposition-confession as against Christopher was improper and prejudicial error for Christopher simply was not afforded his constitutional rights in connection with his giving his deposition.

The Christopher deposition is the only evidence in the record which relates Maxfield to Western States. The admission of the Christopher deposition undoubtedly created confusion in the minds of the jurors regarding the controlling person question above presented, but its use also faced the jury with the super-human task of ignoring it as to Maxfield.

REASONS FOR GRANTING THE WRIT SUMMARY

The Tenth Circuit Court of Appeals by affirming the jury verdict glosses over long established principles of criminal law which in the instant case should exonerate Petitioners. In the instant case, the Tenth Circuit holds that a jury verdict may be inconsistent with itself. This is contrary to decisions announced in the Third and

Eighth Circuits but is in accord with decisions of the Second, Sixth, Seventh, and Ninth Circuits. This Court should settle this conflict of decisions among the Circuits.

The Tenth Circuit Court in affirming the judgment of the Trial Court has decided that information obtained in a secret deposition affecting joint defendants is admissible as to the defendant *who gave the deposition-confession,* and is not prejudicial to the codefendant who was not present at the taking of the secret deposition and who had no right or opportunity to cross-examine the declarant of the deposition so long as the trial court instructs the jury to disregard the deposition-confession as to the codefendant.

The Tenth Circuit Court in affirming the judgment of the Trial Court rejected the contention that matters of jurisdictional nature could be raised at any time and states, while conceding that the misconstruction of Utah law was not an acceptable misrepresentation, that the objection thereto could not be raised in the first instant on appeal.

The Tenth Circuit Court in rejecting the consideration of the jurisdictionally fatal inclusion of charging the defendants with misconstruction of Utah law as to the basis of an alleged misrepresentation, has departed from the usual course of judicial proceedings and calls for an execution of this Court's power of judicial supervision.

The Tenth Circuit Court is deciding important questions of the Securities Act and evidenciary rules relating to the same in the following particulars:

a) That a definition of a controlling person as used in the Act is unnecessary in criminal prosecutions; and

b) That the financial condition of a brokerage company selling the stock of another company is a material fact which the selling brokerage company should disclose to purchasers buying securities of another company for which it is acting as an agent.

The basic, indisputable facts provide ample reasons for granting certiorari in this case.

REASONS

1. THE VERDICT IS CONTRARY TO THE EVIDENCE AND THE LAW AND IS FATALLY INCONSISTENT.

In Counts One through Eight the essential charging parts of the allegations are the employment of a device, scheme and artifice to defraud by means of untrue statements of material facts and omissions to state material facts. The device, scheme and artifice employed was allegedly the formation of Western States by Maxfield and Christopher for the purpose of selling Uinta National stock which was owned by Uinta Finance and which stock at one time had been owned by Maxfield. Further, that Maxfield was, in fact, a controlling person in Western States. Western States sold substantial amounts of this stock to many investors including those named in the various Counts in the indictment. Count Eleven of the indictment recharges Maxfield in one Count for everything he allegedly did in Counts One through Eight. The first eight counts

of the indictment as Judge Murrah pointed out are "inexcusably prolix and redundant counts." If Maxfield was not guilty of Count Eleven, he was necessarily not guilty of the other counts, and if he was guilty of Counts One through Eight, he necessarily, under the evidence, was guilty of Count Eleven.

The Circuit Courts are not in agreement as to whether or not an inconsistent verdict may stand. In *Bargesser v. State*, 95 Fla. 404; 116 So. 12, and in *Speiller v. U.S.*, (3rd Cir.) 31 F.2d 682, it was held that *an inconsistent verdict cannot stand.* The Third Circuit per Judge Davis said:

> "In the instant case, the verdict of guilty on the first count is not based on other evidence than that on which the jury found the defendant not guilty on the second count. The government relied upon the same facts to support a conviction in both counts. In the second count, the jury said, in substance, that these alleged facts are not true; they have no legal existence. Where there is an acquittal on one count of an indictment and a conviction on another count, charging the same crime, the verdict of conviction will not be allowed to stand unless supported by evidence other than on which the acquittal was based. *Peru v. United States*, 4 F.2d 881 (C.C.A. 8); *Murphy v. United States*, 18 F.2d 509 (C.C.A. 8); *Boyle v. United States*, 22 F.2d 547 (C.C.A. 8). We are aware that the Circuit Court of Appeals for the Second Circuit has taken a different view in the cases of *Steckler v. United States*, 7 F.2d 59, and *Seiden v. United States*, 16 F.2d 197. The Seventh and Sixth Circuit Courts of Appeals in the cases of *Carrignan v. United States*, 290 F. 189, and *Gozner v. United States*, 9 F.2d 803, agree with the Second Circuit, but

with great respect we are constrained to differ with them. When the liberty of a citizen is at stake, a jury will not be permitted to make a plaything of a verdict and blow hot and cold at the same time."

In *Thompson v. U.S.*, 227 F.2d 671 (9th Cir.), a similar question was raised. In that case, the jury found the defendant not guilty on a conspiracy count and guilty of making untrue statements and omissions to state material facts as charged in two other counts. The Appellate Court said contrary to the ruling in the Speiller and Bargesser cases, supra, that: "Verdicts on different counts need not be consistent." However, the court quickly went on to say, "Besides, there was no inconsistency shown."

In the instant case the defendant Maxfield, without engaging in any sale with the public; without employing any salesman; without receiving any money from any sale to the public; and without supplying any information to the public whatsoever, was found guilty of all the misdeeds chargeable to Christopher with whom he did not conspire. We submit this is not only inconsistent, it is manifestly unjust.

2. THE CHRISTOPHER DEPOSITION-CONFESSION WAS ERRONEOUSLY ADMITTED AS TO CHRISTOPHER FOR IT WAS INDUCED BY HOPE OR PROMISE OF REWARD OR OTHER BENEFITS AND WAS PREJUDICIAL IN THAT IT ALMOST WHOLLY REFERRED TO MAXFIELD THROUGHOUT ITS CONTENTS.

The use of a confession in a conspiracy criminal trial where one defendant's confession implicates another, has long been a subject of controversy as to whether or not it is unfair to a man who has not confessed. The instant case goes further, for not only did one codefendant not confess, he in fact, denied ever being implicated in the unlawful activities of the confessing defendant. The deposition-confession of Christopher was given with the view of hope, promise or reward if he could implicate Maxfield. But for the deposition-confession of Christopher, in this case, there would be no competent evidence for the jury to consider relative to Maxfield's alleged control of Western States.

As Justices Frankfurter, Black, Douglas and Brennan pointed out in their dissent in *Delli Paoli v. United States*, 77 S.Ct. 284, 351 U.S. 245 (1957):

> "Prosecutions for conspiracy present difficulties and temptations familiar to anyone with experience as a federal prosecutor. The difficulties derive from observance of the rules governing evidence admissible against some but not all defendants in a criminal case. The temptations derive from the advantages of prosecuting in one trial two or more persons collaborating in a criminal enterprise. One of the most recurring of the difficulties perttains to incriminating declarations by one or more of the defendants that are not admissible against others. The dilemma is usually resolved by admitting such evidence against the declarants but cautioning the jury against its use in determining the guilt of the others. The fact of the matter is that too often such admonition against misuse is intrisically ineffective in that the effect of such a nonadmis-

sible declaration cannot be wiped from the brains of the jurors. The admonition therefore becomes a futile collocation of words and fails of its purpose as a legal protection to defendants against whom such a declaration should not tell. While enforcing the rule of admitting the declaration solely against a declarant and admonishing the jury not to consider it against other defendants, Judge Learned Hand, in a series of cases, has recognized the psychological feat that this solution of the dilemma demands of juries. He thus stated the problem:

'in effect, however, the rule probably furthers, rather than impedes, the search for truth, and this perhaps excuses the device which satisfies form while it violates substance; that is, the recommendation to the jury of a mental gymnastic which is beyond, not only their powers, but anybody else's.' *Nash v. United States,* 2 Cir., 54 F. 2d 1006, 1007.

It may well be that where such a declaration only glancingly, as it were, affects a codefendant who cannot be charged with the admitted declaration, the rule enforced by the Court in this case does too little harm not to leave its application to the discretion of the trial judge. But where the conspirator's statement is so damning to another against whom it is inadmissible, as is true in this case, the difficulty of introducing it against the declarant without inevitable harm to a coconspirator, the petitioner in this case, is no justification for causing such harm. The Government should not have the windfall of having the jury consider evidence against a defendant which, as a matter of law, they should not consider but which they cannot put out of their minds. After all, the prosecution could use the confession against the confessor and at the same time avoid such weighty unfairness against a

defendant who cannot be charged with the declaration by not trying all the co-conspirators in a single trial.

It is no answer to suggest that here the petitioner-defendant's guilt is amply demonstrated by the uninfected testimony against him. That is the best of reasons for trying him freed from the inevitable unfairness of being affected by testimony not admissible against him. In any event, it is not for an appellate tribunal to know how the jury's mind would have operated if powerfully improper evidence had not in effect been put in the scale against petitioner."

In the very recent cases of Katzenbach v. Morgan, et al., Nos. 847, 877 and 673, October Term, 1965, this Court stated in part as follows:

". . . Any statement given freely and voluntarily without any compelling influences is, of course, admissable in evidence." The Court in that case further stated: ". . . The warning of the right to remain silent must be accompanied by the explanation that anything said can and will be used against the individual in court."

The compelling influence exerted upon Christopher is obvious. He was trying to blame Maxfield, whom he had been told was the person whom the government was after, for his difficulties. The statement made to Christopher at the time of the deposition by the attorney for the government advised him that he was required to answer all questions except those which would expressly incriminate him and did not effectively advise him of his right to remain silent when he was under investigation as required by the Morgan case (supra) and his right to know that in fact he was being investigated for criminal prosecution.

It is submitted, that even assuming the Christopher deposition-confession is admissible as to Christopher, since it inculpates Maxfield it is a denial of due process as to Maxfield to rely on a jury's presumed ability to disregard codefendant Christopher's confession which implicated Maxfield. A jury should not be permitted to be influenced by evidence against a defendant that as a matter of law they cannot consider but as a matter of fact they cannot disregard. See Morgan, Some Problems of Proof under the Anglo-American System of Litigation (1956) pages 104-105, to the same effect and *Jackson v. Denno,* 84 S. Ct. 1774, 378 U.S. 368.

The California Supreme Court, in *People v. Aranda,* 407 P. 2d 265 (1965), pointed out that "a jury cannot segregate evidence into separate intellectual boxes. It cannot determine that a confession is true insofar as it admits that A has committed criminal acts with B and at the same time effectively ignore the inevitable conclusion that B has committed those same criminal acts with A."

3. THE COURT ERRED IN PERMITTING THE JURY TO CONSIDER EVIDENCE CONCERNING MISREPRESENTATION OF LAW IN DETERMINING GUILT OR INNOCENCE.

The eight counts of the indictment of which Defendants were found guilty each contain specifications of sixteen alleged misrepresentations and nineteen alleged concealments of material facts. In reading said allegations, the Court indicated, in effect, that he believed that even if proved many of the allegations of

misrepresentations and omissions of material facts alleged in the indictment would not be sufficient for a conviction. After reading sub-paragraphs (3) through (11) of the specifications in the indictment to the jury the Court made the following statement:

> "Again, I simply say by way of comment, it seems to me that other matters are more material to the claims of the Government. That, standing alone, wouldn't be sufficient, even if other elements of the offense were present, and the same may be said about general representations as to the solvency of the insurance company." (R. 1770.)

The Court then read sub-paragraph (12) of the specifications in the indictment to the jury and in so doing he inserted his own comments as follows:

> "(12) That the law of the State (impliedly, Utah) compels the company (impliedly, Uinta Insurance) to invest every dollar of its assets in United States Bonds or securities which the State considers just (as) safe." (R. 1770.)

After reading, commenting upon and emphasizing the above charges contained in sub-paragraph (12) of the indictment the court further emphasized the importance of sub-paragraph (12) to the Government's case by making the following statement:

> "And then the Government alleges other background matter, *which I don't deem as essential to their charges* but which may be considered to the extent supported by the evidence as going to other essential charges which I have mentioned." (R. 1771) (Emphasis added).

The Court then summarized and in effect told the jury that they would be authorized to find the Defendants guilty if they found that the Defendants had misrepresented Utah Law, as follows:

> "You can read the indictment and *consider the charges which I specifically referred to which I think are the ones, if any, which would authorize a finding of guilt,* if all of the other elements of the offense were present, in line with the comments that I would hereafter make." (R. 1771) (Emphasis added).

The Court further emphasized the offense charged in the indictment of misrepresentation of Utah Law (R. 1773) and permitted the jury to take a copy of the indictment containing that charge with them to the jury room and invited them to use it in their deliberations (R. 1771, 1776).

The Court in the above quoted citations (R. 1770, 1771) indicated, and the record clearly discloses, that all of the other material allegations contained in the indictment as to misrepresentations or omissions of material facts fell short of charging an offense and the proof were insufficient to prove said allegations beyond a reasonable doubt. Everyone agreed, and the record clearly discloses, that *the sales kit used by the stock salesmen contained precisely the misrepresentation specified in sub-paragraph (12) of the specifications in the indictment* (quoted above). **THE COURT, IN EFFECT, TOLD THE JURY THAT IF THEY FOUND THESE ADMITTED FACTS TO BE TRUE THAT THEY SHOULD FIND THE DEFENDANTS GUILTY.** Sub-paragraph

(12) was heavily emphasized by the prosecution in its evidence and its argument to the jury.

Both Defendants failed to object to the instructions of the Court to the jury with respect to misrepresentation of Utah Law. The Circuit Court of Appeals for the Tenth Circuit in its decision in this case (..... F.2d .....) acknowledged that a misrepresentation opinion of law cannot be the basis for fraudulent misrepresentations, however, refused to reverse the conviction because the Defendants failed to object to the instructions of the Court concerning misrepresentation of Utah Law and because they felt that other specifications of alleged misrepresentations or omissions of material facts were contained in the indictment which, if proven, would authorize the jury to find the Defendants guilty.

This argument begs the question. If a reasonable doubt exists as a matter of law as to whether the Defendants were convicted and are to be punished for acts which are not criminal the conviction should be reversed and they should be granted a new trial. In this case not only does a reasonable doubt exist as to whether the acts for which the Defendants were convicted are in fact criminal acts, but an extremely strong probability exists that the Defendants were convicted of misrepresenting Utah Law which is not a crime. All other charges contained in the indictment were vague and speculative and the proof adduced by the government was weak and unreliable. The only specific proof of an actual misrepresentation or omission was proof that the salesmen misrepresented Utah Law, a fact which everyone openly admitted.

If the only misrepresentation contained in the indictment had been the misrepresentation of Utah Law there would be no doubt that the conviction must be reversed. A Criminal Court acquires its jurisdiction of the subject matter of the offense from the law which defines the acts which the law declares to be criminal, and jurisdiction of the subject matter can neither be waived nor conferred by the consent of the accused. Objection that the court does not have jurisdiction of the subject matter may be made at any stage of the proceedings, and the right to make such objection is never waived. 21 Am.Jur. 2d Criminal Law 379; *U.S. v. Choate,* (C.A. 5) 276 F.2d 724, 86 A.L.R.2d 1337; *Harris v. State,* 46 Del. 111, 82 A.2d 387; *Stilwell v. Markham,* 135 Kan. 206, 10 P.2d 15; *State v. Slorah,* 118 Me. 203, 106 A. 768, 4 A.L.R. 1256; *State v. Venella,* 40 Mont. 326, 106 P. 364; *State v. Oliver,* 186 N.C. 329, 119 S.E. 370; *State ex rel. Lea v. Brown,* 166 Tenn. 669, 64 S.W.2d 841, 91 A.L.R. 1246, cert. den. 292 U.S. 638, 78 L. ed. 1491, 54 S.Ct. 717; *Kelley v. Meyers,* 124 or 322, 263 P. 903, 56 A.L.R. 661; *State v. Stephens,* 150 L.A. 944, 91 So. 349, 23 A.L.R. 286. A criminal court acts beyond its jurisdiction when it undertakes to imprison for an offense to which not criminality is attached. 21 Am.Jur. 2d Criminal Law 376; Re *Corryell,* 22 Cal. 178; *Ex parte Rickey,* 31 Nev. 82, 100 P. 134. The inescapable fact is that the Court had no jurisdiction to try or to punish the Defendants for a misrepresentation of law. To the extent that the conviction of the Defendants is based upon sub-paragraph (12) of the indictment (quoted above) and upon misrepresentation of Utah Law in the sale of the securities

as charged in the indictment the Court is wholly without jurisdiction over the subject matter of the offense, has no power to convict or to punish these Defendants and accordingly the conviction should be reversed and a new trial should be granted on the indictment after striking therefrom all negotiations which charge the Defendants with misrepresentations of law.

The fact that the indictment contains other allegations of alleged misrepresentations or alleged omissions of material facts does not cure the jurisdictional defect which exists as a matter of law in the trial court and accordingly the conviction and sentence should be declared void. If we must speculate as to what evidence was considered by the jury in convicting the Defendants (and this we must do if charges of misrepresentation of law are struck from the indictment), then as a matter of law there is a reasonable doubt as to the guilt of the Defendants and the verdict, conviction and punishment should be set aside by this court.

Due process of law requires that a person actually be guilty of some act or omission which the law declares to be criminal before he can be tried and convicted.

4. DEFINITIONS OF A "CONTROLLING PERSON" UNDER THE SECURITIES ACT SHOULD HAVE BEEN FURNISHED THE JURY BY PROPER INSTRUCTION.

Maxfield was charged with having controlled Western States and other corporations. In this regard, an instruction was imperative. The facts are indisputable that Maxfield sold Uinta National stock to Uinta Fi-

nance. In turn, Uinta Finance sold it to Western States who sold it to the public. At every stage of this transaction the subject persons and corporations made a profit. It was absolutely necessary to the Government's case to show that Maxfield be shown to control the subject corporations. There was no requirement or need for the Court to imply through its various instructions what was meant by "control." In fact, in *United States v. Re,* 336 F.2d 306 (1964), the Court defined control under the Securities Act. It said, "the meaning of control . . . is no different than it is in normal everyday usage." See *Lorain Journal Co. v. F.C.C.,* (C.A.D.C.) 351 F.2d 824 (1965), wherein the Circuit Court for the District of Columbia Circuit examined the unauthorized transfer of control of a broadcasting station. This Court in reviewing the facts found several indicia of control including:

1. Control of directors;
2. Control of the pursestrings;
3. Control of the company policies; and
4. Indirect management.

In the instant case, on this score, the record is naked of any facts which would place control of Western States in Maxfield's hands.

5. FINANCIAL CONDITION AND SOLVENCY OF WESTERN STATES WAS NOT A MATERIAL MATTER TO BE PRESENTED TO THE JURY.

Western States was the insolvent corporation, not Uinta National. It was Uinta Finance's stock that was being sold by Western States.

In this case the Petitioners by the jury verdict are charged with having misled the public on Western States' financial condition in order to sell the public Uinta National's stock. The financial condition of Western States was totally irrelevant. No complaint is made that the public was misled on Uinta National's financial condition, only on Western States. The insolvency of Western States does not constitute a public offense either by Christopher or Maxfield.

CONCLUSION

For the foregoing reasons the Petition for Writ of Certiorari should be granted.

Dated this 23rd day of June, 1966.

RONALD C. BARKER
Attorney for Petitioner Christopher

ROBERT W. HUGHES
CLIFFORD L. ASHTON
Attorney for Petitioner Maxfield

(Appendices A, B, and C follow)

APPENDIX A

MARCH 1966 TERM

Nos.
8208
8209

REED R. MAXFIELD and
JOHN R. CHRISTOPHER,

Appellants,

vs.

UNITED STATES OF
AMERICA;

Appellee.

Appeal from the United States District Court for the District of Utah

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RONALD C. BARKER
for Appellant John R. Christopher

CLIFFORD L. ASHTON
for Appellant Reed R. Maxfield
(Robert W. Hughes with them on briefs.)

DAVID K. WINDER
for Appellee
(William T. Thurman, United States Attorney, David B. Bliss and Seymour Glanzer with him on brief)

Before MURRAH, Chief Judge
BREITENSTEIN and SETH, Circuit Judges.
MURRAH, Chief Judge

Appellants Maxfield and Christopher separately appeal from a judgment and sentence pursuant to a jury verdict on eight inexcusably prolix and redundant counts of an indictment, each of which charges separate

violations of the anti-fraud provisions of the Securities Act of 1933, 15 U.S.C. 77(q).[1] In identical language (except the specific charge of separate fraudulent sales to different individuals) they charge the defendants with having devised an unlawful scheme to sell the stock of Uinta National Life Insurance Company by means of untrue statements and omissions to state material facts. Each count charges the same sixteen specific misrepresentations and nineteen concealments of material facts.

In his instructions to the jury Judge Christensen epitomized the charges to the effect that during the period referred to in the indictment, Maxfield served as President, Chairman of the Board and controlling person of both Uinta Finance Company and Uinta National Life Insurance Company and he also organized, dominated and controlled Western States Underwriters and Mid-America Securities of Utah; that during the same period referred to in the indictment, Christopher served as sales manager and salesman and, together with Maxfield, dominated and controlled the business affairs of Uinta National, Mid-America and Western States; that upon the organization of Uinta National in May, 1958, Maxfield personally acquired, either directly or through others under his control, 10,000 shares of the 76,250 authorized shares of Uinta National at a cost of $14.775 per share in consideration of promotional services; that he and Christopher offered,

[1] Counts 9 and 10 of the indictment charged each of the defendants with a scheme, device or artifice to defraud by use of the mails in violation of 18 U.S.C. 1341. Count 11 charged that appellants conspired to violate the Securities Act and the Mail Fraud Statute in violation of 18 U.S.C. 371. Both defendants were acquitted on Counts 9, 10, and 11.

sold or caused to be offered and sold to investors through the Services of Uinta Finance and Western States all of the 10,000 shares at prices ranging from $40 to $70 per share.

With characteristic thoroughness and fairness, the trial court guided the jury through the complexity of the allegations in the indictment, explaining the meaning of both the applicable law and the charging language. The court interpreted the essential and basic elements of the Government's allegations as the offer and sale of the Uinta National Life Insurance Company stock through the Western States Underwriters by misrepresenting the identity of the parties beneficially interested in said stock, particularly Maxfield's interest therein, or concealing such interest; by representing the non-availability of the stock to the general public and its preferential availability to the stockholders by means of preferment or entitlement certificates; by misrepresenting the increasing value of the stock and its deliverability when paid for by the particular investor.

At the conclusion of the instructions, counsel for Christopher excepted only to the court's failure to give all requested instructions given as requested by the Government. We have said that his form of generalized objection is insufficient to distinctly state the matter objected to and the grounds for the objection as required by Rule 30, F.R.Crim.P., 18 U.S.C. See *Burns v. United States,* 286 F.2d 152. Counsel for Maxfield's only exception was that "inasmuch as the complaint charged that Maxfield was a controlling person in Western States, the court should have instructed the jury that it must so find."

Apparently without contending against the sufficiency of the evidence to go to the jury on the existence of a fraudulent scheme, Maxfield insists that the evidence is entirely insufficient as a matter of law to sustain the allegations in the indictment to the effect that he dominated and controlled the Western States Underwriters or that he had anything whatsoever to do with the sale of Uinta National stock as alleged in the indictment. Instead he points to his strenuous objection to Christopher's operation of Western States and to his protest to the Utah Securities Commissioner. In sum he contends that although he sold no stock, employed no salesmen, supplied no information to the public, and received no money from the sale of stock, he was nevertheless found guilty of all the misdeeds charged to Christopher, with whom he had been found not to have conspired. He says that acquittal on the mail fraud and conspiracy charges required acquittal on the other eight counts. But, as we have recently held following established authority, since each count in an indictment is a separate offense, consistency in the verdict is not necessary. See *Burns v. United States,* supra; *Thomas v. United States,* 227 F.2d 667.

The basic facts are that Maxfield, his brother and others organized and promoted Uinta Finance by a public offering of its stock within the state of Utah. Maxfield was President, Chairman of the Board and dominant officer. Christopher was Sales Manager during part of the stock offering. In May, 1958, Maxfield and at least some of the incorporators of Uinta Finance formed Uinta National Life Insurance Company with a $10,000 paid-in capital structure. The incorporators

apparently gave notes for their respective stock subscriptions, and Maxfield thereafter acquired the 9,600 shares of non-voting incorporators' stock. About five months later, he borrowed $125,000 from Uinta Finance to pay for the stock and qualify the insurance company in Utah as a legal reserve company. The insurance company public stock offering was completed in the latter part of 1958. The last block of stock was sold to a former stock salesman for Uinta Finance and Uinta National who in turn sold it to Mid-America Securities.

Early in 1959 Maxfield divided 6,050 shares of his incorporators' stock into 242,000 units and sold it to Uinta Finance for $242,000. His loan account with the insurance company was credited with this amount. It thus appears that the incorporators' stock which Maxfield purchased for the sum of $125,000 was resold to the finance company for $242,000.

Mid-America had been organized by appellant Maxfield's brother in 1955 and apparently thereafter sold to Norman Hays. In 1958 Maxfield negotiated the resale of the company to his brother for the sum of $2,500, paid by a Uinta Finance Company check. Christopher registered as a dealer for Mid-America and apparently became its Sales Manager. Early in 1959 Maxfield negotiated the resale of the company to Hays for $1,500 and arranged with Hays for Mid-America to sell some of the stock which he had sold to Uinta Finance by depositing the stock in a safety deposit box for delivery as and when sold. But, on advice of counsel Hays finally declined to participate in the sale of the stock. Maxfield objected to the competency of these transactions, but the evidence was apparently ad-

mitted to show Maxfield's continued interest in the sale of his insurance stock to the public and also as a nexus with the Western States activities. We think it was admissible for that purpose. See *Roe v. United States*, 316 F.2nd 617.

In the fall of 1958 Christopher had resigned as Sales Manager for Uinta National and early in 1959 with his wife and other he organized Western States Underwriters. It immediately entered into a contract with Uinta Finance for the sale of Uinta National stock which Maxfield had sold to the finance company. Thus, Christopher was Sales Manager for Uinta Finance when its stock was being offered directly to the public by the company. He was Sales Manager for Uinta National when its stock was being sold directly to the public. After the offering was completed, he became a registered salesman and Sales Manager for Mid-America. He then became Sales Manager for Western States. In all these stock offerings some of the same salesmen were used with the same sales kits which had been prepared by a sales promotion organization at the instance of Maxfield. Under an agreement with Uinta Finance, the insurance stock certificates were placed in a safety deposit box and were to be delivered to Western States as and when the stock was paid. Purchasers of the stock were permitted to pay for it either at the office of the finance company or Western States and to make their installment payments alternatively for stock purchased directly from the insurance company or through Western States.

There can be little doubt of the sufficiency of the evidence to go to the jury on the fraudulent scheme

to sell Uinta National stock through the facilities of Western States Underwriters. There was no disclosure of the circumstances surrounding Maxfield's acquisition of the stock and its sale to the finance company, and that the offering was a secondary issue. There was no demand for the stock justifying preferential representations to the stockholders. This sales gimmick was certainly susceptible of an inference of fraudulent misrepresentation in order to induce stockholders to buy more stock under the impression that the stock was in a seller's market. Then, too, there was proof to the effect that Western States did not deliver the stock upon payment. Of a total of $182,000 received by Western States for stock sales during the charging period only $96,140 of fully paid-up stock was ever issued to investors. $28,566 worth of stock was partially paid for by installments but not delivered, and $54,810 worth of stock was fully paid but not delivered.

The jury was instructed that "*** failure to deliver stock or the failure to refund money*** is not in and of itself charged as a criminal offense against either defendant, and such mere failure would not authorize a conviction in this case. On the other hand, if there were *** a plan to defraud, participated in knowingly and agreed to by one or more of the defendants and the use of the mails pursuant to such plan *** then the fact that thereafter money or stock either was not refunded or the fact that the buyers either did or did not sustain loss *** would be no defense to the *** defendants so participating in *** such scheme to defraud."

There was also evidence that during the time that Western States was in default on stocks sold and un-

delivered, Christopher and his wife drew over $30,000 from the company. The jury was specifically told that Christopher was not charged with the offense of withdrawing money from Western States or failure to deliver stock or refund money to persons who purchased stock from it, but these circumstances could be considered in determining his intent to devise a scheme to defraud as alleged in the indictment. There was evidence of fraudulent representations by salesmen concerning the value of the stock and the condition of the company, certainly enough to go to the jury on the issue of fraud and Christopher's complicity in it.

There was proof that Uinta National's Comptroller examined the Western States books and found a deficiency of about $15,000, and that it was reported to Maxfield; that Maxfield knew of Western States' deficiencies and defaults but took no action to protect the investors or prospective investors. Maxfield's persuasive answer is that in the first place he had nothing whatsoever to do with Western States' sales activities, was not interested in it and owed it no obligation. In the second place he says that when he finally learned of the financial situation, he complained to the Utah Insurance Commissioner and the Securities Commission; that his affirmative steps to protect the finance company and the insurance company from the stigma of Western States; defalcations should serve to exonerate him from any complicity in the enterprise. He says with emphasis that there was certainly no evidence to support the allegations in the indictment to the effect that he dominated and controlled Western States and that the jury should have been directed to return a verdict for him.

The trial court specifically instructed the jury concerning the evidence relative to Maxfield's acquisition of the Uinta National Stock sold through the facilities of Western States. The jury was told that the Government did not claim the acquisition of such stock by Maxfield in and of itself constituted criminal fraud and that the facts and circumstances surrounding the transaction and the sale of the stock to the finance company could be considered only with other facts and circumstances to determine whether in order to dispose of the stock Maxfield, himself or jointly with Christopher, devised a plan or scheme to sell such stock through Western States by means of false representations and caused the mails to be used in furtherance of such scheme.

With respect to Maxfield's alleged control of Western States the jury was specifically told that while it was not necessary for the government to show that in all respects and at all times Maxfield was and continued in control of Western States, it was essential to show beyond a reasonable doubt that Maxfield devised or agreed to a plan or scheme to utilize Western States to effectuate a fraudulent plant to dispose of the stock to the public and in furtherance of this plan Christopher or someone else acting in his behalf and within the scope of the plan utilized the United States mails as charged.

The jury was told that if Maxfield did not become a party to a plan or scheme to dispose of stock by false representations through Western States, any false representations used without his authorization by Christopher or those acting under him could not be attributable to Maxfield. On the other hand, if it is shown

beyond a reasonable doubt that Maxfield was a party to the alleged plan or scheme to dispose of the stock to the public by means of some or all of the material false representations charged, then the defendant could be held responsible for such false representation, if any, even though he had no actual knowledge of them at the time they were made.

Our examination of the record does not disclose that either of the appellants moved for a judgment of acquittal at the close of all of the evidence. In this posture of the case the sufficiency of the evidence to support the verdict of the jury is not open to us unless we are convinced from an appraisal of all of the evidence that the verdict is palpably wrong. See *Fitts v. United States,* 328 F.2d 844; *Hughes v. United States,* 320 F.2d 459. In any event we think the proof and the permissible inferences to be drawn from it was sufficient to go to the jury on the question of Maxfield's participation in the fraudulent scheme to sell Uinta National stock through Western States.

Maxfield also took exception to the cross-examination of him concerning his activities in connection with the merger of the insurance company with another company and the amount of money he made from the transaction. But, the records show that the door was opened on direct examination, and the scope of the cross-examination was for the trial court. There is nothing to indicate that the court's allowable discretion was abused. See *Wilcoxson v. United States,* 231 F.2d 384.

Christopher separately complains of the admission of the admission of his deposition taken by the SEC

and read to the jury over his objections. It was admitted as an incriminating statement against him, and the jury was cautioned that it was admissible as against him alone and not against Maxfield. It was voluntarily given while he was represented by counsel, and it is not rendered inadmissible simply because he thought it would serve to exonerate him of blame in the venture.

He also complains of answers by the court to a question of a juror. At the conclusion of all the evidence and instructions of the court, one juror inquired, "What do we do in case we don't agree unanimously? Do we continue to ballot?" The court answered, "Certainly, I see no likelihood or possibility at this stage of your not agreeing. It would be unusual if you don't agree. I've already instructed you with regard to the unanimity of your verdict. It would be most unfortunate if any juror at this time had made up his mind or had it in mind that they weren't going to agree, and I hope that that question doesn't reflect any such state of mind. But, nonetheless, I have given you an instruction on that." In the first place, no exceptions were taken to the court's answer, and in the second place, it was perfectly proper.

Prejudicial error is also claimed in the court's instructions relating to sub-paragraph 12 of the specifications of false representations. The indictment alleged in sub-paragraph 12 that Western States had represented to prospective investors that the law of Utah "compels insurance companies to invest every dollar of its assets in United States bonds or securities which the State considers just and safe." The court did read this representation to the jury along with eleven other

specifications and a number of specific acts of fraudulent concealment. In calling attention to these specific representations or fraudulent concealments, the court told the jury that there were other allegations of false representations and fraudulent concealment which it was perfectly free to consider, but pointed to the enumerated ones as, in its view, most material to the essential elements of the offense.

Christopher contends simply that a representation of the law of the State or Utah, or a statement of an opinion concerning it could not form a basis for a false representation. In the first place, no objection was taken to the court's instructions concerning this specific misrepresentation and concealment. If the representation was incapable of being fraudulent, counsel should have objected to it as such, either as being improperly alleged or improperly submitted to the jury. In the second place, the representation was not singled out for emphasis.

except in connection with the eleven other specific misrepresentations which the court deemed material. Conceding that an opinion on the law cannot be the basis for fraudulent misrepresentation, when considered in the context in which reference was made to it, we do not think it was palpably erroneous and it cannot, therefore, be noticed here for the first time on appeal.

Finally, both, Christopher and Maxfield, complain of the failure of the court to discharge the jury because of the illness of the wife of one of the jurors. The record in that respect, however, shows that the court proceeded with the full knowledge and consent of all the

parties. No objections were made at any point. It appears that while the jury was deliberating, information came to the court that the juror's wife was to have surgery. After discussing the matter in the chambers, and after having agreed upon a course of action, but before the court had time to inform the juror as agreed, the jury arrived at its verdict. There can be no complaint. No objections were ever made — as a matter of fact, no objections could have been made of the trial court's agreed treatment of the problem. *Cf. Bacino v. United States,* 316 F.2d 11.

The judgment is affirmed.

APPENDIX B

The Statutory provisions involved are 15 U.S.C. 77(q); which is as follows:

> "It shall be unlawful for any person in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, either directly or indirectly —
>
> (1) to employ any device, scheme or artifice to defraud. . ."

18 U.S.C. 371:

> "If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.
>
> If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor. June 25, 1948, c. 645, 62 Stat. 701."

18 U.S.C. 1341:

> "Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for

the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Post Office Department, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined not more than $1,000 or imprisoned not more than five years, or both. June 25, 1948, c. 645, 62 Stat. 763; May 24, 1949, c. 139, § 34, 63 Stat. 94."

U.S. Const. amend. V:

"No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

U.S. Const. amend. VI:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

(Appendix C is contained in a separate booklet)